IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 9257 of 2005

1. Ganya Parsha Bhagat
and others ..Petitioners

vs.

1. Gunabai Vishnu Patil
and others ...Respondents

Shri S.J.Chourasia i/b Shri Y.M.Nakhwa for petitioners.
Shri D.S,.Sawant for respondents.

CORAM: S.B.MHASE J.
10th February, 2006

P.C.

1. Heard both sides.

2. The order dated 30th August, 2005 refusing interim relief to the appellant and enforcing the decree passed in Reg.Civil Suit No.52 of 2002 dated 30th April, 2004 from the file of the Joint Civil Judge, Jr.Dn., Panvel is challenged in this writ petition. The decree states that the respondent/original plaintiff is having 1/3rd share in the 16 suit lands except the lands survey no.455/5 till the day same were acquired by CIDCO vide Award dated 7th May, 1985 in Unit Case no.249. It is further declared that the original plaintiff has 1/3rd share in the benefits of any kind which defendant nos. 8 and 9 i.e. CIDCO will

allot in lieu of the acquired suit lands except Survey No.455/5. It is further directed that original defendant nos. 8 and 9 shall allot/give all the benefits including the plots to be allotted in lieu of the acquired suit lands to the original plaintiff in the said suit after receiving her written requisition to that effect in accordance with her share declared in this suit. Thus, so far as the decree is concerned, it is a simplicitor declaratory decree and the benefits which are allotted by defendant nos. 8 and 9 are to be given to the original plaintiff. Therefore, the first Appellate Court has rightly rejected the interim relief. Learned Counsel for the petitioners tried to persuade this Court that the first appellate Court has admitted the appeal and, therefore, stay should have been granted. Admission of the appeal ipsofacto does not amount to stay and/or creating any right in favour of the appellant to get the stay order. The petition is without any merit. The same is, therefore, rejected.

(S.B.MHASE J.)